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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition Of The Connecticut Department Of
Public Utility Control To Retain
Regulatory Control Of The Rates
Of Wholesale Cellular Service
Providers In Connecticut

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94-106
FCC File No. 94-SP4
September 19, 1994

COMMENTS OF THE ATTORNEY GENERAL OF THE STATE OF CONNECTICUT

I. OPENING STATEMENT

Richard Blumenthal, Attorney General of the State of Connecticut, hereby files his comments in support of the Connecticut Department of Public Utility Control's ("Department" or "DPUC") Petition to Retain Regulatory Authority and Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut which was filed with this Commission on August 9, 1994 (the "Petition").

The Attorney General is the constitutional officer empowered by Connecticut statutory and common law to represent the interests of the State of Connecticut and its residents. *Commission on Special Revenue v. Freedom of Information Comm.*, 174 Conn. 308, 318-319 (1978). When, therefore, the Department opened a docket to investigate allegations that market conditions have caused Connecticut cellular subscribers to be

charged unjust and unreasonable rates, our office requested and received permission to be an intervenor, on behalf of consumers in the proceedings.

Unfortunately, as the Department in the Petition demonstrates, the allegations are true. Connecticut's wholesale cellular providers may downplay the realities of Connecticut's cellular marketplace, by citing, among other things, federal policy favoring competition and appropriately deregulated CMRS markets. However, under the circumstances evidenced in the Petition, both Congress and this Commission have endorsed state rate regulation of cellular rates. *See 47 U.S.C.A. §332(c)(3)(A)(i-ii)(B); In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-31, Gen. Dkt. No. 93-252 (the "FCC Order")* ¶12, 16. Congress and this Commission have already concluded, as did the Department, that when CMRS markets like Connecticut's wholesale cellular markets are functioning improperly, allowing states to retain their authority to prevent CMRS providers from exploiting market power to *stifle competition* and *harm* consumers does not frustrate federal policy but instead is integral to its success.

We are confident, therefore, that if such arguments are raised here they will be rejected. The Department has shown that it justifiably petitioned this Commission to retain its authority to regulate wholesale cellular rates. As discussed further below, we urge the Commission to grant the Petition.

II. THE EVIDENCE BEFORE THE DEPARTMENT AND THIS COMMISSION SHOWS THAT CONDITIONS IN THE WHOLESALE CELLULAR MARKETPLACE ARE NOT PROTECTING CONSUMERS

The Petition is the result of the Department's comprehensive review of Connecticut's CMRS market including Connecticut's cellular telephone service providers. There were seven days of hearings, hours of testimony, and not surprisingly, thousands of pages of documents, including transcripts and pre-filed testimony.

The results of the Department's comprehensive examination of the market, which are codified in the Petition demonstrate that the following statements accurately describe the condition of Connecticut's cellular telephone service market: Connecticut's wholesale cellular telephone service market is highly concentrated and, therefore, is not truly competitive. *Petition at 2, 4.* It will likely remain so until after the turn of the century. *Petition at 4.* At present there are no substitutes for cellular telephone service. *Id.*

The wholesale cellular carriers employ pricing strategies, including volume discounts, which in today's cellular market in Connecticut give price advantages to their affiliated retail arms and correspondingly hurt the ability of independent resellers to compete with them on an equal footing at the retail level. *Petition at 3, 4.* In addition, wholesale carriers have engaged in other anticompetitive conduct aimed at unfairly benefiting their affiliated retail arms including: requiring independent resellers who compete with the retail arms of the wholesalers to divulge confidential information

including their retail rates and competitive pricing strategies to the wholesale carriers (*Petition at 3*); structuring their operations and practices so that information can be improperly disclosed by the wholesalers to their retail arms to disadvantage the independent resellers with which they compete, including involving the same persons in retail/wholesale pricing and decisions, and transferring pricing or promotional information to their retail affiliates before it is announced to independent resellers (*Petition at 2, 3*); and attempting to steer independent resellers away from providing service to certain customers. *Petition, Exhibit A, DPUC Investigation Into The Connecticut Cellular Service Market And The Status Of Competition, Decision, dated August 8, 1994 ("The Decision") at 26.*

One wholesale cellular carrier also requires independent resellers who sell its service to use long distance services provided by its affiliated long distance company. *Petition at 3*. It has even gone so far as to try to prevent disgruntled resellers from petitioning the Department for relief. *Id.*

In addition to the staggering list of evidence chronicled in the Petition, the record below shows that Connecticut's wholesale cellular carriers admit that prices are higher than they would be in a competitive market. In fact, as the Department in the Petition demonstrates, wholesale carriers have continued to employ billing strategies that force consumers to pay for more cellular telephone air time than they actually use, even though

they have the technical ability to bill consumers more accurately and fairly. *Decision at 28.*

The Department has demonstrated in the Petition that conditions in Connecticut's cellular market fail to protect consumers.

**III. THE COMMISSION SHOULD GIVE DUE WEIGHT TO THE CONTEXT
IN WHICH THE DEPARTMENT PRODUCED THE EVIDENCE
CONTAINED IN THE DECISION.**

Although the Department has discretion under paragraph 252 of the Order to submit whatever evidence it deems persuasive, the Department went much further than just hiring a consultant or obtaining affidavits or surveys before deciding to petition this Commission. It conducted extensive hearings, reviewed thousands of pages of documents and transcripts and listened to countless hours of testimony. Because of its chosen method of presenting evidence to this Commission, we urge the Commission to afford appropriate weight to the Department's conclusions, particularly as to such matters as the credibility of the witnesses that appeared before it. The state's unique ability to make such determinations as part of a full blown proceeding is implicit in its authority under this Commission's rules to "submit whatever evidence the *state believes*" is necessary. *FCC Order at ¶252.*

Further, a careful review of the Department's conclusions show that they stand on solid ground. For example, the Department's rejection in this particular case of the

wholesale carriers' claim that the potential for the eventual entry of competitors and one provider in particular, Nextel, warrant the abandonment of regulation of CMRS rates, has been borne out. The record disclosed that the carriers claims were speculative, (*See Petition at 4, Decision at 18*), and with regard to Nextel in particular raised significant concerns about when and if Nextel would effectively compete with cellular telephone service in Connecticut. Indeed, after the Petition was filed MCI announced that it is pulling out of a deal to pay \$1.36 billion for 17% of Nextel, citing "quality problems". *See, "How MCI Got A Bad Connection," Business Week, September 12, 1994 at 34.*

As another example, although opponents of regulation cited a truncated version of the Justice Department's tests for market concentration in the proceeding below, the Department's conclusions on market concentration are based on a full and proper application of the Justice Department's Merger guidelines. *See, Decision at 18.* And, overall, the Department correctly rejected the carriers' implications that this Commission and the Department have somehow sanctioned the unjust market conditions and anticompetitive conduct that has taken place in the Connecticut. *See, e.g. Decision at 26, 27.*

IV. THE DEPARTMENT'S ACTIONS ARE FORWARD LOOKING AND ARE FOCUSED ON PROTECTING CONSUMERS BY PROMOTING AN ENVIRONMENT WHERE FULL COMPETITION THRIVES. ACCORDINGLY, THE DEPARTMENT HAS COMMITTED TO REVIEWING THE SITUATION IN 1996.

It is apparent from the Petition that the Department's goals are in harmony with Congress' goals in enacting 47 U.S.C.A. §332 et seq. and this Commission's goals as discussed in the *FCC Order*. The Department does not believe and does not seek to permanently retain its authority over cellular rates. *Petition at 5.*

The Department only seeks to retain authority to regulate rates long enough to allow other CMRS providers to enter the Connecticut marketplace. *Id.* Accordingly, the Department has already scheduled a further review of the cellular market in 1996 when some new competitors are scheduled to be operational in Connecticut. *Id.* The primary goal of the Department is to ensure by way of an interim solution that competition in the marketplace actually develops. Its Petition should be granted.


V. CONCLUSION

Until effective competition arrives in Connecticut's cellular telephone market, we urge the Commission to allow the state to protect its residents from being charged unreasonable rates. Deregulation at this point will not benefit consumers or foster

competition, but instead will do the opposite. That result, is disfavored by Congress and by this Commission. For all of the above reasons, the Department has demonstrated that conditions in Connecticut's cellular telephone market are not protecting Connecticut consumers. We therefore urge the Commission to grant the DPUC's petition.

Respectfully submitted,

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